came into effect after the plaintiff signed the letter requesting the Clerk to Dewan Rakyat to remit his monthly salary to Messrs. Kwong Lee Bank Bhd. (Exhibit DF-1) and his letter to Kwong Lee Bank (Exhibit DF-2) requesting the Manager of the bank to credit his salary to the account of the Party (SUPP) clearly shows that the plaintiff had honoured the declaration which he made prior to his becoming a Member of Dewan Rakyat. However, we have the evidence of the defendant and that of DW2, the Secretary-General of the Party, to the effect that such contribution was required to defray the election expenses borne by the Party. The total amount was $15,000 for which the plaintiff signed the Promissory Note as in Exhibit PL-14.

Based on the above facts given in evidence by both parties and on going through the arguments and submissions by counsel of both parties, the trial court comes to the following conclusions: —

(1) There was no fraud, conspiracy or malicious falsehood on the part of the defendant;

(2) The claim for consultation fees in the sum of $1,405 is not allowed as it was not shown to be relevant to the present suit against the defendant;

(3) The contract between the plaintiff and the Party resulting in the termination of the plaintiff from being a Member of Parliament is illegal because it is against public policy. The submission of the letter of resignation earlier signed by the plaintiff to the Speaker, Dewan Rakyat, was therefore a wrongful act on the part of the defendant and therefore the plaintiff is entitled to damages. The plaintiff had lost a sum of $41,325.80 which he would have received until the dissolution of the Dewan Rakyat. The plaintiff however is obliged to pay back the $15,000 which he had partly honoured before his resignation. He is therefore not entitled to the sum of $8,024.70 retained by the Party, and a further sum of $6,975.30 is to be deducted from the $41,325.80; the total sum which the defendant has to pay the plaintiff in damages is therefore $34,350.50;

(4) Other claims for damages are not allowed and dismissed;

(5) As the claims made by the plaintiff against the defendant are partly vexatious, the trial court orders that the plaintiff is awarded only one-half of the costs to be taxed.

Order accordingly.

Solicitors: *Thomas & Co.; Yong & Wong & Co.*

DR. TI TEOW SIEW & ORS. v. PENDAFTAR GERAN-GERAN TANAH NEGERI SELANGOR

[O.C.J. (Hashim Yeop A. Sani J.) September 30, 1981]
[Kuala Lumpur — Originating Motion No. A 15 of 1981]

Land Law — Alienation of land — Restriction in interest — Date when restriction commenced — Date of registration — National Land Code, ss. 5, 78(3) & 105.

In this case land had been alienated to the first applicant, the title being endorsed with the following endorsement of restriction in interest — "The land hereby leased shall not be transferred or leased for a period of fifteen years without the consent of the Ruler in Council."

The title also contained particulars stating *inter alia* that the title commenced from August 18, 1964. The alienation of the land was registered after full payment of premium and other fees on November 9, 1967. The first applicant transferred the land to the 2nd and 3rd applicants on May 5, 1980 and the 2nd and 3rd applicants also executed a charge in favour of the 4th applicant on the same day. The memorandum of transfer and charge were presented for registration but were rejected by the respondent on the ground that the restriction in interest was still subsisting.

The question was whether the restriction in interest commenced from the date endorsed on the title, that is August 18, 1964 or the date when the alienation was registered that is on November 9, 1967.

The applicants applied to set aside the decision of the respondent in refusing to accept the documents for registration and for a declaration that the restriction in interest endorsed on the document of title expired on August 17, 1979.

Held: the restriction in interest commenced from the date of registration of the register document of title, that is, November 9, 1967, and the respondent was therefore correct in rejecting the documents presented for registration.

Cases referred to:-

(1) *Fels* v. *Knowles* (1906) 26 N.Z.L.R. 604.

(2) *Malayan Borneo Building Society Ltd.* v. *M. Ramachandran* [1959] M.L.J. 182.

(3) *Boyd* v. *Mayor etc. of Wellington* [1924] N.Z.L.R. 505.

ORIGINATING MOTION.

C.T. Khaw for the applicants.

Abdul Malik Salleh, Legal Adviser, Selangor for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: In this Originating motion the applicants are asking for a number of orders the most important among which is an order to set aside the decision of the Pendaftar Geran-Geran Tanah Negeri Selangor (Registrar of Titles, Selangor) dated February 21, 1981 refusing to accept for registration the memorandum of transfer and a charge in respect of property of the first applicant held under H.S.(D) 8502 PT. No. 1 Jalan 14/48 in the Mukim of Petaling Jaya. The applicants also seek for a declaration that the restriction in interest endorsed on the document of title of the said property expired on August 17, 1979.

From the affidavit of the lawful attorney of the first applicant, sworn on June 10, 1981, the following facts are disclosed. The first applicant is and was at all material times admittedly the *registered proprietor* of the property in question. By a sale and purchase agreement dated March 25, 1980 he agreed to sell and the 2nd and 3rd applicants agreed to pur-

chase the property subject to the terms and conditions set out therein. A memorandum of transfer dated May 5, 1980 was duly executed and the 2nd and 3rd applicants also executed a charge in favour of the 4th applicant, a finance company.

To digress a little here, the said affidavit also exhibited copy of the title of the said property — "MSY 2". It can be seen that page 1 of the title carries the following endorsement —

"'*restriction in interest*'. 'The land hereby leased shall not be transferred or leased for a period of 15 years without the consent of the Ruler in Council'."

At page 2 of the title the following particulars also appear —

"(1) Tarikh mula-mula diberi milik — 18.8.1964
(2) No. hakmilik asal (tetap atau sementara) Q.T.(R) 2742."

The said memorandum of transfer and charge were thereafter presented for registration to the respondent and these documents were in fact registered but subsequently, however, the registration was cancelled. In his letter dated February 21, 1981 the respondent wrote to the solicitors of the applicants to the effect that the application for registration was rejected on the grounds that the restriction in interest on the said property was according to the respondent still in force. The respondent was of the opinion that the restriction in interest commenced from November 9, 1967 and the period of 15 years will expire only on November 8, 1982 — see affidavit of respondent dated September 5, 1981. It is obvious that the respondent relied on the calculation that the period of 15 years commenced from November 9, 1967, being the date which the alienation of the said land was *registered* after full payment of premium and other fees was made.

It can be seen clearly that the central and only issue in this case is on what date the restriction in interest commenced. The applicant relies on the particulars appearing on page 2 of the title which states that the application was given the title on August 18, 1964 and if the restriction in interest commenced on that date it therefore expired on August 17, 1979. Based on this calculation therefore the respondent would be wrong in rejecting the application for registration.

The respondent, on the other hand, relies on section 78(3) of the National Land Code which states that the alienation of State land shall take effect *upon registration* and the date of registration being November 9, 1967 the period of 15 years has not ended.

It is not disputed that the proper registering authority under the Land Code has the right to reject any instrument on the ground that it is unfit for registration. Counsel for applicant argued that for purposes of calculating the period for the operation of the restriction in interest in this case the question of registration is irrelevant. With respect I totally disagree. Registration is central in the Torrens system and in any statute like the National Land Code which carries the Torrens system. As Edwards J. said in delivering the judgment of the Court of Appeal in *Fels* v. *Knowles*[1]:

"The cardinal principle of the statute is that the register is everything. . . ."

It is registration that gives and extinguishes title under the National Land Code. Registration is the corner-stone of the Torrens system.

According to section 105 of the National Land Code, restriction in interest starts to run from the date of alienation. Section 105 reads as follows:

"(1) Every condition or restriction in interest imposed by or under this Act shall, except where it is otherwise provided by this Act or the context requires, commence to run from the date of alienation of the land to which it relates."

In my opinion the word "alienation" is crucial for the proper interpretation of section 105. Section 78(3) of the Code determines when an alienation of State land shall take effect and it is clear from that sub-section that alienation takes effect *upon registration.* Section 78(3) of the Code reads as follows:

"(3) The alienation of State land shall take effect *upon the registration* of a register document of title thereto pursuant to the provisions referred to sub-section (1) or (2), as the case may be; and, notwithstanding that its alienation has been approved by the State Authority, the land shall remain State land until that time." (emphasis mine).

It is to be observed in the second limb of that sub-section until the date of registration the land shall remain State land.

The importance of registration is again and again emphasised in the Code. Thus in the definition of "restriction in interest" in section 5 of the Code the expression is defined to mean any limitation imposed by the State authority or any conditions imposed on a *proprietor* in Pt. 9 and Division IV of the Code. The definition of "proprietor" in the same section of the Code describes a proprietor to mean any person or body for the time being *registered as proprietor* of any alienated land.

Thus it is clear in law that for the purposes of the National Land Code the first applicant was never the "proprietor" of the said property prior to the date of registration. There can be no question therefore of any property in the said land being vested in the first applicant prior to the date of registration although the said land was approved for alienation as stated in the letter of the Assistant Collector of Land Revenue, Petaling Jaya, addressed to the first applicant informing him of the approval for alienation and setting out the fees to be paid and setting out also the express conditions and the restrictions in interest. For the same line of argument please see also the judgment of Thomson C.J. (as he then was) in *Malayan Borneo Building Society Ltd.* v. *M. Ramachandran.*[2]

Looking at the second limb of section 78(3) of the Code it seems clear to me that the restriction in interest could not have commenced before the date of registration because the land remained State land and the restriction could not have meant to operate on the State authority.

Counsel for the applicant argued also that if we construe the date of commencement of the restriction in interest to be later than the date that the first applicant paid the fees due upon the approval for alienation which is incidentally also the date endorsed

on page 2 of the title which is August 18, 1964, then the first applicant would in theory be free to deal with the said property before the date of registration and therefore would be contrary to the very object of the restriction in interest. I think this line of argument is purely hypothetical and does not arise at all in this case. Furthermore it is to be observed that when the first applicant was informed that his application for land was approved the same letter which conveyed the approval also conveyed the express conditions and the restriction in interest imposed on the land.

It would seem clear that as a result of the endorsement at page 2 of the title there was a mistake on the part of the applicants as to the expiry date of the restriction in interest on the land. But as Salmond J. said in *Boyd* v. *Mayor etc. of Wellington*[3]: —

"I can see no difference in this respect between an instrument which is void because 'unknown to the parties' it is a forgery and one which is void executed by an infant or by an attorney without authority or by mistake or *ultra vires*."

My conclusions are therefore as follows:—

(a) Since registration is the cornerstone of the Torrens system the restriction in interest on the land in question commenced from the date of the registration of the register document of title i.e. November 9, 1967 and will cease to operate only after 15 years from that date;

(b) Section 105(1) of the National Land Code (providing for the commencement of a restriction in interest) must be read together with section 78(3) of the Code (providing how alienation is effected) to give a proper interpretation as to when the period of restriction in interest begins to run;

(c) In determining the period during which the restriction in interest is in force according to law, the endorsement purporting to show the date on which title of the said land was granted (August 18, 1964) appearing at page 2 of copy of title being an administrative act should be ignored.

Application is dismissed with costs.

Application dismissed.

Solicitors: *Allen & Gledhill.*

ZAINAL ABIDIN BIN HAJI ABDUL RAHMAN v. CENTURY HOTEL SDN. BHD.

[O.C.J. (Hashim Yeop A. Sani J.) October 6, 1981]

[Kuala Lumpur — Civil Suit No. F 252 of 1981]

Practice and Procedure — Application for order to restrain defendant from selling, transferring or in any manner disposing of land until disposal of suit — Mareva Injunction — Whether High Court has power to grant application — Jurisdiction and power of High Court — Remedy of plaintiff before judgment — Debtors Ordinance, 1957, s. 19 — Specific Relief Act, 1950, ss. 50 & 51 — Courts of Judicature Act, 1964, s. 25 and Schedule, paragraph 6 — Civil Law Act, 1956, s. 3 — Federal Constitution, art. 121.

Jurisdiction — Mareva injunction — Court has no power to grant such an injunction.

In this case the plaintiff had entered into an agreement with the defendant company whereby the defendant company let to the plaintiff the whole of the third floor of the building known as Century Hotel for a period of three years for the purpose of running a recreational centre. The plaintiff claimed that he had carried out extensive renovations to the premises and that he had paid all rents due punctually. He alleged that the defendants in breach of the agreement prevented the plaintiff and his agents from entering the premises. The plaintiff had brought a suit against the defendants claiming damages arising from the alleged breach of agreement amounting to approximately $5,000,000. He also alleged that from newspaper reports it appeared that the defendant intended to close down the business of the hotel and that there was a probability that the surplus assets of the defendants would be appropriated by a company which wholly controlled it. The lands and building known as Century Hotel were the only substantial assets of the defendants. The plaintiff applied for a restraining order to restrain the defendant company from selling, transferring or in any manner howsoever disposing of any of the lands and building known as Century Hotel until the disposal of the main suit or further order. Counsel for the plaintiff stated that the plaintiff was in effect asking for a *Mareva* injunction and it was argued that section 25 of the Courts of Judicature Act 1964 and section 51 of the Specific Relief Act would empower the High Court to grant such a restraining order.

Held: (1) although the jurisdiction of the High Court is unlimited in the sense that it is as wide a jurisdiction as that of the High Court in England, the expression "unlimited jurisdiction" only describes the extent or area where the judicial authority or power of the High Court is exercisable. The manner in which the judicial authority or power is exercised is not unlimited, as the High Court is a creature of statute and all its powers must be derived from a written law, expressly or by necessary implication;

(2) the remedy sought by the plaintiff in the notice of motion is unknown in our law. The only remedy available to the plaintiff before judgment according to our law is that provided by section 19 of the Debtors Ordinance 1957 upon satisfying the court of the requirements of the section;

(3) the types of restraining orders that can be granted by the High Court are restricted to those described in the Specific Relief Act, 1950 and paragraph 6 of the Schedule to the Court of Judicature Act, 1964;

(4) in this case the affidavit of the plaintiff did not disclose sufficient grounds to justify any intervention by the court.

Per curiam: The High Court here possesses no power to grant restraining order of the nature described as the *Mareva* injunction. We simply have no statutory provision corresponding to section 45 of the English Courts of Judicature (Consolidation) Act, 1925.

Cases referred to:-

(1) *Bekhor & Co. Ltd.* v. *Bilton* [1981] 2 W.L.R. 601 & 610.

(2) *Nippon Yusen Kaisha* v. *Karageorgis* [1975] 3 All E.R. 282.

(3) *Mareva Compania Naviera S.A.* v. *International Bulkcarriers S.A.* [1975] 2 Lloyd's Rep. 509.

(4) *Prince Abdul Rahman bin Turki Al Sudairy* v. *Abu Taha* [1980] 1 W.L.R. 1268.

(5) *Searose Ltd.* v. *Seatrain Ltd.* [1981] 1 W.L.R. 897.

(6) *Faith Panton Property* v. *Godgette* [1981] 2 All E.R. 877, 883.

(7) *Lister Co.* v. *Stubbs* (1890) 45 Ch. D. 1 & 13.

(8) *Barclay-Johnson* v. *Yuill* [1980] 3 All E.R. 190.

(9) *Ponniah* v. *Chinniah* [1961] M.L.J. 66.

(10) *Lee Lee Cheng (f)* v. *Seow Peng Kwang* [1960] M.L.J. 1 & 3.

(11) *H.G. Warren* v. *Tay Say Geok & Ors.* [1965] 1 M.L.J. 44.

(12) *Kepong Prospecting Ltd.* v. *Schmidt* [1962] M.L.J. 375.

(13) *Nowroji Pudumjee Siradar* v. *The Deccan Bank Ltd.* I.L.R. 45. Bom. 1256; A.I.R. 1921 Bom. 69.

CIVIL SUIT.

Sri Ram for the plaintiff.

Raja Abdul Aziz Addruse for the defendant.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: In this notice of motion the plaintiff asks for a restraining order to restrain